



KENNETH SHAYNE

187 IBLA 358

Decided May 19, 2016



United States Department of the Interior

Office of Hearings and Appeals

Interior Board of Land Appeals
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KENNETH SHAYNE

IBLA 2015-241

Decided May 19, 2016

Appeal from a June 29, 2015, Notice issued by the Bureau of Land Management (BLM), informing appellant that BLM intended to terminate his right-of-way (ROW) grant unless he paid \$18,088.77 for rent, interest, and penalties associated with the ROW grant for 2010 through 2012 and 2013 through 2015. CACA-26400.

Partial motion to dismiss granted; decision affirmed.

1. Federal Land Policy and Management Act of 1976:
Rights-of-Way

An appellant challenging a BLM ROW rental determination bears the burden of demonstrating that BLM used inappropriate data or erred in its calculations, or otherwise erred in applying the rental schedule to the particular ROW.

2. Administrative Procedure: Administrative Review;
Federal Land Policy and Management Act of 1976:
Rights-of-Way

Under the doctrine of administrative finality, when a party has had the opportunity to obtain review within the Department and no appeal was taken, or an appeal was taken and the case was considered on review, the decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of the parties' basic rights or the need to prevent an injustice. Where the Board has already ruled that BLM's rental determinations for a ROW were properly calculated, and affirmed BLM's denials of a waiver or reduction of rent for the ROW, an appellant cannot again appeal those same decisions absent any compelling legal or equitable reason to reconsider those same decisions.

APPEARANCES: Kenneth Shayne, Indio, California, *pro se*; Clementine Josephson, Esq., and Janelle Bogue, Esq., Office of the Regional Solicitor, Pacific Southwest Region, United States Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

Kenneth Shayne has appealed from a June 29, 2015, Notice issued by the Palm Springs-South Coast Field Office (California), Bureau of Land Management (BLM). The Notice informed Shayne that BLM intended to terminate his ROW grant (serialized as CACA-26400) unless he paid \$18,088.77 for rent, interest, and penalties associated with the ROW grant for 2010 through 2012 and 2013 through 2015. Shayne alleges that BLM's decision was in error because the agency charged late fees, penalties, and interest for rent owed for 2010 through 2012, and because the rent calculated by BLM for all years was based on an incorrect acreage amount. Because this Board has already ruled on BLM's rental determinations for 2010 through 2012, and because Shayne has not shown error in BLM's rental calculations, we grant BLM's partial motion to dismiss and affirm the agency's decision.

Shayne's Right-of-Way Grant

BLM granted the ROW at issue to Shayne on January 1, 1993, for a term of 30 years, subject to renewal, under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) and BLM's implementing regulations.¹ The ROW consists of two segments, one 6,000 feet long and 40 feet wide and the other 900 feet long and 20 feet wide, covering a total of 5.9 acres of public land in Riverside County, California. The ROW provides road and utility access to appellant's 40-acre private land parcel.

FLPMA requires that BLM charge fair market value for rental of a ROW.² Until 2008, BLM determined the fair market rental value for a linear ROW grant, such as appellant's, by a per-acre rental fee zone value schedule.³ Based on that regulatory schedule, BLM established an advanced annual rental rate for appellant's ROW of approximately \$74 per year. In 2008, BLM amended its ROW regulations, adopting a new per-acre rental fee schedule for linear ROWs.⁴ The new fee schedule established

¹ 43 U.S.C. §§ 1761-1771 (2012); 43 C.F.R. Part 2800.

² 43 U.S.C. § 1764(g) (2012).

³ See 43 C.F.R. § 2803.1-2(c)(1)(i) (2004).

⁴ See 43 C.F.R. §§ 2806.20, 2806.22, and 2806.23(a); 73 Fed. Reg. 65040 (Oct. 31, 2008).

a formula based on the assignment of counties (or other geographical areas) to a “County Zone Number and Per Acre Zone Value.”⁵

For calendar years 2010, 2011, and 2012, BLM issued to Shayne decisions requiring an annual rental payment for his ROW based on the new regulatory formula. Shayne appealed the decisions for calendar years 2010 and 2011 (docketed as IBLA 2010-78 and IBLA 2011-72). Shayne also appealed BLM’s denial of his requests for a rent reduction or waiver under 43 C.F.R. § 2806.15(c) for calendar years 2010, 2011, and 2012 (docketed as IBLA 2010-97, IBLA 2011-12, and 2012-133). Ultimately, the Board affirmed all of BLM’s decisions, denying Shayne’s various petitions for stay as moot. Shayne also sought, but this Board denied, reconsideration of our decisions affirming BLM’s denial of his requests for rental reduction or waiver.⁶ Shayne then filed a complaint in the District Court for the Central District of California, challenging the Board’s orders with respect to the rentals due for 2010, 2011 and 2012. The district court affirmed the Board’s decisions and dismissed Shayne’s complaint.⁷

In the decision now on appeal, BLM explained to Shayne that the district court had affirmed the Board’s orders upholding BLM’s rental determinations for 2010, 2011, and 2012, and notified Shayne that in order to maintain his ROW, he was required to pay BLM within 45 days for the rent owed for these years, including late fees and penalties, totaling \$6,106.93.⁸ The amount owed by Shayne to BLM was for calendar years 2010 and 2012. The rent owed by Shayne for calendar year 2011 was subject to collection by the U.S. Department of Treasury; BLM stated in its June 29, 2015, decision that Shayne “must continue coordination and payment . . . with the Department of Treasury until that debt is paid in full which may exceed the 45-day time frame.”⁹ The decision also notified Shayne that BLM had not billed him for calendar years 2013, 2014, or 2015 during the pendency of his various administrative appeals and the litigation in federal district court, and that he now owes rent for these 3 years, totaling \$11,981.84.¹⁰ The decision stated that if Shayne did not pay the entire amount of \$18,088.77 within 45 days BLM would terminate the ROW.¹¹

⁵ 43 C.F.R. § 2806.21.

⁶ *Kenneth D. Shayne (On Reconsideration)*, Order dated Apr. 27, 2011, IBLA 2011-12-1; *Kenneth D. Shayne (On Reconsideration)*, Order dated Mar. 14, 2013, IBLA 2012-133-1.

⁷ *Kenneth D. Shayne v. United States Department of the Interior*, EDCV 13-674 JGB (Aug. 6, 2014).

⁸ June 29, 2015, decision at unpaginated (unp.) 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Shayne paid the full amount owed to the agency, and timely filed a notice of appeal (NOA).¹² For the reasons set forth in our Order, dated September 9, 2015, we granted Shayne's motion for expedited consideration of his appeal. BLM filed the administrative record on September 14, 2015, and a Partial Motion to Dismiss and Answer on September 22, 2015 (Answer); Shayne filed a Reply on October 19, 2015.

Analysis

[1] An appellant challenging a BLM ROW rental determination bears the burden of demonstrating that BLM used inappropriate data or erred in its calculations, or otherwise erred in applying the proper rental schedule to the particular ROW.¹³ On appeal, Shayne argues that BLM erred by charging late fees, penalties, and interest for rent owed for calendar years 2010, 2011, and 2012 during the time that his appeals were pending before this Board and district court.¹⁴ He also argues that BLM is charging too much rent because his ROW covers 4.6 acres, rather than the 5.9 acres specified in the ROW grant, and because BLM has failed to address his requests to correct the acreage and reduce the width of a portion of his ROW.¹⁵ We address each argument below.

1. *Under the doctrine of administrative finality, Shayne cannot again challenge BLM's rental determinations for 2010, 2011, and 2012.*

In his current appeal, Shayne challenges BLM's rental determinations for calendar years 2010, 2011, and 2012, the same decisions he challenged in his previous appeals. While Shayne did not make the specific claim he is making now in his previous appeals – that BLM is precluded from assessing late fees, interest, and penalties while his previous appeals and federal court litigation were pending – he is nevertheless seeking to again challenge BLM's rental determinations for those same years. But because these rental determinations have already been upheld by this Board (and the Board's decisions were affirmed by the district court), Shayne is precluded from doing so.

[2] Under the doctrine of administrative finality, which is the administrative counterpart of the judicial doctrine of *res judicata*, “when a party has had an opportunity to obtain review within the Department and no appeal was taken, or an

¹² See NOA, Ex. B.

¹³ *Mark Patrick Heath*, 181 IBLA 114, 126 (2011); *Citicasters Co.*, 166 IBLA 111, 116 (2005).

¹⁴ NOA at 1, 3-4.

¹⁵ *Id.* at 1, 3, 4-5.

appeal was taken and the case was considered on review, the decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice.”¹⁶ Here, the Board has already ruled that BLM’s rental determinations for 2010 and 2011 were properly calculated, and affirmed BLM’s denials of a waiver or reduction of rent for 2011 and 2012.¹⁷ Shayne does not offer any compelling legal or equitable reason for us to now reconsider those same decisions. We therefore grant BLM’s partial motion to dismiss Shayne’s appeal with respect to rent owed for these years.

Even if we found that the doctrine of administrative finality did not preclude Shayne from raising this claim with respect to BLM’s rental determinations for calendar years 2010 through 2012, Shayne still fails to meet his burden to show error in BLM’s decisions. BLM correctly points out that under its regulations, when payment is not made within 15 calendar days after rent is due, BLM is *required* to charge a late payment fee.¹⁸ Further, BLM has the authority to charge other administrative fees when a rent payment is not paid within 30 days after rent is due, and even if BLM terminates a ROW for failure to pay, “[t]he rent due, late payment fees, and any administrative fees remain a debt that you owe to the United States.”¹⁹ Shayne cites no legal authority, and we can find none, that prevents BLM from assessing late fees, interest, and penalties during the pendency of his administrative appeal and judicial litigation. We find no error in BLM’s assessments and therefore affirm them.

2. *Shayne has not shown any error in BLM’s rental determinations for 2013, 2014, and 2015.*

Shayne argues that BLM is charging him for 5.9 acres when the ROW is only 4.6 acres, stating that his ROW grant was “never” 5.9 acres and that his own measurements

¹⁶ *West Virginia Highlands Conservancy, Inc.*, 166 IBLA 39, 44 (2005); *Douglas E. Noland*, 156 IBLA 35, 38-39 (2001) (“[O]nce a party has availed himself of the opportunity to obtain administrative review of a decision within the Department, that party is precluded from litigating the matter in subsequent proceedings except upon a showing of compelling legal or equitable reasons.”) (emphasis in original).

¹⁷ Although Shayne did not appeal BLM’s rental determination for 2012, appealing only when the agency denied his request for a waiver or reduction in the rent, the time for doing so has long passed. See 43 C.F.R. § 4.411(a)(2)(i).

¹⁸ 43 C.F.R. § 2806.13(a); Answer at 6.

¹⁹ 43 C.F.R. § 2806.13(b), (c).

show otherwise.²⁰ Shayne also complains that BLM has refused to process several requests to correct this acreage calculation and to reduce the width of a portion of the ROW.²¹

The size of the ROW grant, however, is not the subject of BLM's decision on appeal. Rather, the issue before us is whether BLM properly calculated rent for calendar years 2013 through 2015 for the ROW in effect during those years. Shayne's burden is to show error in BLM's calculations or in the application of the rental schedule to his ROW.²²

Although Shayne states that the ROW has never contained 5.9 acres, the ROW grant signed by Shayne and BLM, and in effect since 1993, explicitly identifies the ROW as containing 5.9 acres.²³ And under the ROW regulations, BLM's rental calculation is to be based on the acreage in the approved ROW grant.²⁴ This is what BLM did, and Shayne has not shown any error in the agency's calculations.

BLM explained in its June 29, 2015, decision that a change in the ROW area can occur only through an application to amend the grant, and that while Shayne may have requested such a change on January 30, 2013, BLM could not process any request until Shayne was current on his rental payments.²⁵ BLM also specified in its decision that any request for a change in the ROW area must be made by submitting an application form to BLM.²⁶ Regardless, whether and when Shayne properly seeks changes to his ROW grant have no bearing on the legal question before us – *i.e.*, whether BLM properly calculated the rent for the currently approved ROW, which contains 5.9 acres. Since Shayne has shown no error in BLM's calculations for the rent owed for calendar years 2013 through 2015, we affirm BLM's June 29, 2015, decision.

²⁰ NOA at 3.

²¹ *Id.* at 3, 4.

²² *See Mark Patrick Heath*, 181 IBLA at 126.

²³ Administrative Record (AR) Folder 1.

²⁴ 43 C.F.R. § 2806.23(a) (BLM calculates rent by multiplying the rent per acres by the number of acres "in the right-of-way area.").

²⁵ June 29, 2015, decision at unp. 3.

²⁶ *Id.*

Conclusion

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,²⁷ we grant BLM's partial motion to dismiss Shayne's appeal of BLM's rental determinations for calendar years 2010 through 2012, and affirm BLM's June 29, 2015, decision with respect to the rental determinations for calendar years 2013 through 2015.

/s/

Amy B. Sosin
Administrative Judge

I concur:

/s/

James K. Jackson
Administrative Judge

²⁷ 43 C.F.R. § 4.1.